



TAX NEWSLETTER

January 2023

I. CORPORATE TAXATION

- **Temporary solidarity contribution: taxation of companies operating in the sectors of crude oil, natural gas, coal and refining on their extraordinary profits - Finance Law No.2022-1726 for 2023 of December 30th, 2022 ("Finance Law for 2023"), Section 40**

EU companies and permanent establishments earning at least 75% of their turnover from economic activities in the sectors of crude oil, natural gas, coal and refining will be liable to pay a temporary solidarity contribution of 33% of their extraordinary profits as from the first fiscal year opened on or after January 1st, 2022.

- **Merger's favorable tax regime: exemption from the holding obligation where the shareholder owns 5% of the voting rights of the listed contributing company - Finance Law for 2023, Section 25**

In case of a contribution-attribution transaction under approval, the obligation to hold the shares of the listed contributing company will no longer be required for shareholders who hold at least 5% of the voting rights of the latter at the date of approval of the contribution.

- **Shareholders' current accounts: the French Tax Authorities ("FTA") publish the maximum rate of deductible interest for 2022 - BOI-BIC-CHG-50-50-30, §40 published on January 18th, 2023**

For the 12-month periods ending between December 31st, 2022 and March 30th, 2023, the maximum deductible interest's rate is set between 2.21% and 2.58% (depending on the closing date of the fiscal year).

II. TAX AUDIT

- **Foreign assets: formal notice from the French National Financial Prosecutor's Office ("PNF") - Press release on January 18th, 2023**

Following the disclosure in 2018 of the "Dubai Papers" concerning the HELIN company and its clients, the PNF invites the concerned taxpayers to announce themselves before April 30th, 2023. After this date, the PNF will take their silence into account for the criminal treatment of the files.

- **Tax raids: the Liberties and Detention Judge ("LDJ") who authorizes tax raids may rule on the seizure carried out - QPC Decision of the French Constitutional Court ("FCC") on January 19th, 2023, No.2022-1030 and No.2022-1031**

The FCC considers constitutional, with caution, the circumstance that the LDJ who authorizes a tax raid may then rule on the dispute relating to the seizure made. Indeed, the FCC specifies that the principle of impartiality does not preclude the LDJ who authorized a tax raid from appreciating the dispute relating to the seizure carried out on this occasion by another LDJ. On the other hand, the same LDJ cannot authorize and conduct the tax raid and then rule on the dispute without disregarding the principle of impartiality.





- **Disclosure of manual gifts: it is not possible to opt for the deferred declaration when it intervenes during an Audit of the Personal Tax Situation ("ESFP") - Decision of the Commercial Chamber of the French Civil Supreme Court on January 25th, 2023, No.20-16.700**

The French Civil Supreme Court considers that when the disclosure of a manual gift intervenes at the time of the first meeting of the donee with the FTA during an ESFP, the taxpayer cannot elect for the deferred declaration option (within one month following the date of the donor's death) provided by Section 635 A of the French Tax Code ("FTC"). Indeed, as the audit was notified two months earlier, the disclosure is not voluntary.

III. INTERNATIONAL TAXATION

- **Transfer pricing: a transfer of profits may be characterized in case of a transfer of clients from a branch to its head office - Decision of the 9th and 10th chambers of the French Administrative Supreme Court ("CE") on December 21st, 2022, No.450796, Sté Bupa Insurance Ltd**

The CE considers that the provisions of Section 57 of the FTC can be applied to the French branch of a company established abroad for the transfer of intangible assets (such as customers), whether free of charge or on a reduced basis, should it be demonstrated that the customers are attached to the branch.

- **Cross-border workers: France and Switzerland agree on teleworking - Mutual agreement on December 22nd, 2022 concerning provisions applicable to income referred to in Section 17, 1 of the Franco-Swiss tax Convention signed on September 9th, 1966**

France and Switzerland signed on December 22nd, 2022 two mutual agreements (following the end of the mutual agreement which had been in force since May 13th, 2020) according to which teleworking within the limit of 40% of the annual working time does not jeopardize the tax regime of employees.

IV. INDIVIDUAL TAXATION

- **Shareholders' current accounts: the lock-up agreement implemented by a partner does not impact the taxation of the sums booked on the current account - Decision of the 3rd and 8th chambers of the CE on December 21st, 2022, No.462533**

The CE considers that the shareholder whose current account has been credited cannot reverse the presumption of disposal of the credited sums because of a lock-up agreement that he has implemented. Indeed, the taxpayer could have withdrawn the sums credited to his current account by December 31st at the latest, making them taxable in the year in which they were booked.

- **Real estate taxation: owners of real estates must submit a new tax return before July 1st, 2023 - Section 146 of the Finance Law No.2019-1479 for 2020 dated December 28th, 2019**

Starting on January 1st, 2023, all owners, individuals or legal entities, of a principal or secondary residence, a rental property or a vacant property, must, for each of their properties, indicate in which capacity they occupy them and, if they do not occupy them, declare the identity of the occupants and the period of occupancy. If not, a fine of €150 per property will apply.